IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 6614 of 2007(K)

OS.69/2003 of MUNSIFF COURT, RANNI

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PETITIONER:

K.J.BABY, AGED 71 YEARS,
S/O.LATE K.K.JOHN, KADUTHANATHU
VEEDU, VAIPUR, KODUMUDISSERY MURI,
KOTTANGAL VILLAGE,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.JOSEPH GEORGE

RESPONDENT:

BABU.K.JOHN, AGED 60 YEARS,
S/O.LATE K.K.JOHN, KADUTHANATHU VEEDU,
VAIPUR, KODUMUDISSERY MURI,
KOTTANGAL VILLAGE,
PATHANAMTHITTA DITRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 6614/07

PETITIONER'S EXHIBITS:

EXT. P1 PHOTOCOPY OF IA 117/07 IN OS 69/03 OF MUNSIFF'S COURT, RANNI

EXT. P2 PHOTOCOPY OF ORDER DT. 5.2.07 IN IA 127/07 IN OS 69/03 OF MUNSIFF'S COURT, RANNI

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 6614 of 2007 K

JUDGMENT

The petitioner is the plaintiff in O.S.No.69/03 on the file of the Munsiff's Court, Ranni. The suit is one for recovery of possession and consequential injunction. It is his case that in 1998, the respondent trespassed into a portion of the property of 2.75 acres, obtained by him under the Partition Deed No.2597/70, demolishing the boundaries of the property and annexed that portion with his property. It is submitted that with a view to have the property so trespassed measured out, a Commission was deputed to measure out the property with the help of the Taluk Surveyor, with a specific direction that the property should be measured out on the basis of the partition deed. It is submitted that the respondent/defendant is also a sharer under the very same partition deed.

2. The grievance of the petitioner is that the Commissioner filed a report without measuring out

the property on the basis of the partition deed, which is the title deed of both the parties; that therefore, he filed Exhibit P1 petition to remit the Commissioner's report and plan to the Commissioner, but without considering Exhibit P1 petition, the trial court included the suit in the special list for trial and that therefore, he filed I.A.No.127/07 to advance hearing of the case and to have Exhibit P1 considered. It is submitted that though the case was included in the special list for trial only to 7.3.2007, the request made as early as in February 2007 to have hearing of the case advanced and to have Exhibit P1 considered was dismissed by the court below, vide Exhibit P2 order, assigning the reason that there is no need to advance hearing of the case at this juncture. Obviously, the court below has not considered as to the reason why advancing of hearing of the case was asked for. Naturally the court would have dismissed Exhibit P1 petition, if it comes up for consideration on the day on which the suit is in

the list. Dismissal of I.A.No.127/07, vide Exhibit P2 order, in the circumstances, is incorrect and Exhibit P1 petition deserves to be considered and appropriate orders passed even before the suit is included in the special list for trial. The respondent/defendant, who is served, does not come forward to say anything in the matter.

3. In the result, I quash Exhibit P2 order passed by the court below and direct the court below to consider and pass appropriate orders on Exhibit P1 petition on merits and to proceed with the trial of the suit only thereafter.

This writ petition is disposed of with the above directions.

19th March, 2007 (K.P.Balachandran, Judge)

tkv